C.F. 72.

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rtment of

OFFICE Board of Re

STATION Chepauk

No. 2819

Dated 22.12.25

Lodged at office 4:10 PM 22/12

To whom sent		Date	Initial.
	Given for copying		
	Copied		
	Examined		
	Signed		
	Given for despatch	received for despatch at 5-15 P.M Proceedings — only date 22.12.25	
	Despatched		
	Indexed		
Pages in the file	To be destroyed on*		

(SUBJECT.)

Revision of Leave) — Casual Leave — D.O. 479/25 — War claim — Service Decision — Appeal — Sanctioned

* Not to be filled in in the case of permanent records.

Ref on A 3-8854-24.

A 747

South Kanara Collector's Office,

Camp, Beltangady, Dated 14-12-1925.

From

G. W. Wells, Esquire, M.A., I.C.S.,

Collector of South Kanara.

To

The Secretary to the Board,

Land Revenue,

Madras.

Sir,

Suit - Karkal - Dt. Munsif's court - O.S.1924-47.

The above suit defence of which was sanctioned by the Board in its proceedings No.2775 Mis. dated 20-11-24, was decided by the District Munsif against Government on 18-9-25. The facts of the case have been fully set forth in this office letters Ref. on 4818-22-V 7 dated 9-11-22 and 11-6-23 disposed of in B.P.4529, Routine Land Revenue dated 9-11-23.

2. The main contentions of the Government in the suit --- were that the suit was barred by time and by the provisions of --- Act IV of 1897. These contentions have been found against -------- Government.

3. The District Munsif finds that the Plaintiffs had been in possession and so long as they are not physically ousted by some overt act on the part of the Government, there could be no question of limitation. The only acts of possession found by the District Munsif are, however, grazing cattle, and fetching --- fuel and manure leaves which acts are allowed by Government on all waste lands. The plaintiffs have not proved any acts of possession inconsistent with these uses i.e a fixed, a definable and an ------ exclusive occupation to the perception of Government as held by the Bombay and Madras High courts in I.L.R. 3 Bombay 583,584,586, and 739 and I.L.R. 28 Madras 286 and so the question of possession could not have arisen. On the other hand the 1st plaintiff's ------ father had applied to the Special Settlement Officer on 12-9-04 to have his mulpatta lands included in his patta. But only an ---- extent of 13.18 acres was included in his patta. Hence the ----

petitioner's claim must have been held to be time-barred under Art 120 of the first schedule to the Limitation Act (IX of 1908) on the analogy of the decisions in S.A.No.2048/14 on the file of the Madras High Court and the Privy Council judgment in Appeal No.53 of 22 in I.L.R.47 Madras 572.

4. As regards the question of the applicability of the Survey and Boundaries Act the District Munsif holds that there is nothing in the Act or any notification issued thereunder to warrant the position that mulpatta titles not duly notified within the time allowed are to be forfeited. He is also of opinion that the notifications are executive orders which cannot confiscate longstanding rights of parties. But it seems that the notifications that the mulpatta holdings should be determined and surveyed under the Act having been issued under section 5 of the Act, it must be considered to have the same legal force as the Act under which it was issued and under sections 11 to 13 of the Act the suit seems to have been barred. As regards the District Munsif's remarks on the publication of the mulpatta notification in para 10 of his judgment, reference is solicited to para 3 of B.P. 2613 Mis.L.R./10-5-04 the instructions laid down in which were followed by the Special Settlement Officer in the mulpatta enquiry held in 1921. In fact a copy of the mulpatta notification was actually served on the Plaintiffs' father Vasu Bhatta in June 1904 in M.P.R. 413/04 submitted herewith.

5. The Government Pleader, Mangalore whom I have consulted is of opinion that the limitation question seems to be fairly strong for Government. I agree with him.

6. In case, the Board decides that an appeal should be filed, I request that the enclosed draft appeal memo prepared by the Government Pleader, Mangalore may be approved.

7. The appeal time expires on 28-12-25, but as the court will be closed on that date on account of Christmas Holidays, the appeal can be filed on the reopening day.

8. The records noted in the margin are enclosed for reference.

1. Copies of judgment and degree with sketches and index.

included in the Pattas issued to Plaintiffs at the settlement.

5. The Lower Court has failed to attach due legal weight to the circumstance that Ex.A mentions only 80 Bettu Vadis or plots of 12 muras in extent, without even the expression 'Sarvadthi' (and ------- everything)

6. . The Lower Court ought to have accepted the defence version as indentification of boundaries in Ex.A. The reasons given for not --- accepting the same are neither sound nor valid nor cogent.

7. The finding on issue 2 is neither supported nor warranted by the evidence and the probabilities of the case.

8. The Lower court ought to have found that Plaintiffs have ----- entirely failed to establish their possession and enjoyment of suit property much less their proprietory right within the statutory period as against Government.

9. The oral evidence for Plaintiffs interested as it is, -------- entirely nagatives the Plaintiffs' exclusive enjoyment of suit ------ property on warg/proprietory right.

10. The Lower Court has misunderstood and misappreciated the oral evidence for the defence. The inferences drawn by the ----- Lower court from defence oral evidence are based on pure surmises.

11. The fact that Plaintiffs' fathers claim to anything more than what was comprised in his Pattas was rejected so far back as 1904 and that he never took any steps to establish his title for over the statutory period and that on the other hand he has been from time to time obtaining pieces of land on darkhast from Government within the alleged limits of mulpatta, not only establish beyond doubt that Plaintiffs have no title to the suit land but also a consciousness on their part that they have no title to the suit land.

12. The Lower court erred in holding that Plaintiffs have ----- absolute title to the lands coloured faint red in the plan annexed to the decree and lying within the boundaries mentioned in the ------ decree. The reasons given for the said finding are neither sound nor valid and are based on surmises.

13. The Lower court ought to have held that Plaintiffs are ------ estopped from laying any claim to the plaint B schedule properties.

14. The Lower court erred in holding that Plaintiffs are ------- entitled to the declaration sought for.

15. The Lower court ought to have held that Plaintiffs' claim is clearly barred by limitation. The Lower court has entirely failed to notice and apply the case law on the point. 14.L.W.197 47 I.L.R. 35 P.C. 31 All.9 S.A.2048/14.

16. The Lower court ought to have also held that Plaintiffs' suit is barred by time and also by reason of the provisions of Act IV of 1897.

17. The Lower court has not given due legal weight to defence exhibits.

18. The Lower court has not correctly appreciated the oral and documentary evidence in the case.

19. The Lower court ought under the cirsumstances of the case to have dismissed Plaintiffs' suit with costs.

Memo of valuation.

Declaration and setting aside the darkhast grants ordering delivery of the properties valued as in the Lower court.	Rs 153-12-0
& costs.	

Sd/B. Mahabala Hegde,
Government Pleader.
9-12-25.

Copy of letter Dis.223/25 dated 9-12-25.
From - The Government Pleader, Mangalore.
To - The Collector of South Kanara.

Ref on A 3-8854-24 dated 1-12-1925.

I have drafted appeal grounds. It covers all grounds.

I was not in a position to find when assignments were made by the Government to defendants 2 to 11. If those assignments were made more than 12 years ago, it is an additional limitation bar for recovery of those lands from the defendats 2 to 11. You will please find out when those assignments were made. But my grounds cover that point also.

Limitation question seems to be fairly strong for us, I have quoted the material cases.

Act IV of 1897 may also bar the present suit in view of -- sections 11 to 13.

On merits, defence witnesses are a title bit stupid. If the matter had stood with the oral evidence of Plaintiffs' witnesses and

no defence evidence it would have been much better. Even as the matter stands now the whole of the deposition of each defence witness has to be construed and shown that it does not help ----- Plaintiffs.

Last date of filing appeal is 28th December. But that being a holiday appeal can also be filed on the reopening day after Xmas.

With a view to consider if additional evidence can be let in, in appeal I request that an urgent order may be sent to the ------- Shanbogue of Mijar Firka that he may come and see me.

Records sent to me are herewith returned.

In the Court of the District Munsif of Karkal.

Present:- M.R.Ry. N.V.Pai, Avl., B.A.,L.L.B., Friday the 18th day of September 1925.

Original suit No.479 of 1924.

Between:-

1. Puttannaiya
2. Narnappaiya
3. Ramannaiya
4. Subbanna.

Sons of Aremajalu Vasu Bhatta. — Plaintiffs.

Plaintiffs reside in Badaga Mijar village, Karkal Taluk.

and

1. Secretary of state for India in Council
2. Putta Gowda
3. Appu Gowda — Sons of Krishna Gowda.
4. Appu Panditha, son of Kunhamma
5. Subbanna, son of 8th defendant
6. Lingamma sister of 8th defendant.
7. Nagamma wife of 8th defendant
8. Veeraiya alias Koragappa son of Thimmaiya.
9. Chinga Gowda
10. Annappa Gowda. — Sons of Santhu Gowda.
11. Babu Gowda, younger brother of Defendants 2 & 3.

— Defendants.

Defendants 2 to 11 reside in Badaga Mijar village.

Suit for a decree (1) declaring that the Plaintiffs are entitled to get incorporated in their pattas Nos.54 of Badaga Mijar village No.167 of Puthige village and No.33 of Thodar --- village the properties described in plaint schedule B and ----- situated in the respective villages (2) setting aside the ----- several darkhast grants made to Defendants 2 to 7, 9 to 11 and to 8th defendant's brother late Haraina in respect of the C.--- schedule properties and declaring that such grants are not valid and binding on Plaintiffs and order delivery of those properties to Plaintiffs together with future profits in respect of them at the annual rate of Rs 48/- from the date of plaint (24-8-1924) till delivery of possession.

Cause of action arose at Badaga Mijar village in 1921 and on 9-3-1924.

Value of the claim Rs 153-12-0.

Decree:- This suit coming on for final hearing on ------ Tuesday, the 15th day of September 1925 before M.R.Ry. K.V.Pai Avl., Dt. Munsif in the presence of Mr. M. Mukunda Kamath Pleader for Plaintiff, of Mr. K. Sadashiva Bhatt Vakil for 1st defendant, of --- Mr. M. Vasudevaiya, Pleader for Defendants 4 to 8 and the defendants 2,3,9,10 & 11 being exparte and having stood over to this day for consideration, it is hereby declared

1. that out of the plaint B schedule properties the Plaintiffs have an absolute title to the lands coloured faint red in the plan annexed hereto and lying within the following boundaries.

(a) North:- the road marked R in the plan and running from east to west.

East:- Heddari marked H and the road K in continuation of H. southwards.

South and South west:- Line running along the boundary line U commencing from the road K. channel L1, F12, T2, T1 and T and the line U up to point M and

West:- The line U between points M and R.

(b) The land situated north of the road R and comprised within the beli or agalu marked E, E1, E2, E3, E4, E15, E14, E13, E16, E17 E18, E19, E20 and E 21 and identified by the red cross mark lines.

2. That the Plaintiffs are entitled to have those lands included in their pattas for the respective villages in which they are ------ situate after being assessed at the ordinary settlement rates.

and 3. That the assignments on Revenue Darkhast in respect of the lands mentioned in plaint schedule C made by the 1st defendant in favour of defendants 2 to 7, 9 to 11 and the 8th defendant's ------- brother Narayana are void and ineffectual as against the Plaintiffs and it is decreed as follows:-

1. Defendants shall surrender to Plaintiffs possession of the C schedule properties without any sort of objection whatever.

2. Defendants 2 to 11 are at liberty to remove the improvements if any, effected by them on those lands before delivering possession

3. 1st defendant shall, pay to Plaintiffs Rs 101-10-0 on account of their costs of this suit together with interest thereon at 6% per annum from this date till payment

and 4. The rest of the Plaintiffs' claim be, and the same hereby is disallowed.

Description of the plaint property.

A schedule.

ಮೂಲ ನಂಬ್ರ 5 ರಲ್ಲಿನ ಪಟ್ಟಿಯ ಬಡಗ ಮಿಜಾರು, ಪಶ್ಚಿಮ ಕಡೆ ಕೆಲ್ಲಿಪಾಡಿ ಗ್ರಾಮ ಕಳ್ಳ ಬಾಳು ಮೂಲಕ ಹೋಗುವ ನಮೂದಿಸಿದ ಕ.ಡಿ

1. ಪಶ್ಚಿಮಕ್ಕೆ ನಾ ಹೆಳಿಯಂದ ತೆಂಕಲ್ಲು ಹೆದ್ದಾರಿ ಮಾರ್ಗದಿಂದ ಪಡುವಲು, ಬಂಗಾಳಿಕ್ಕಿ, ಅಂತರ ಹಾಳಿಯ ನಡುವಿಂದ ತಾ ಪೆರ್ಣಿಗ ಕೆಲ್ಲಿನವರೆಗೆ ಕೆಲ್ಲಿದಿಂದ ಬಡಕಲು, ಕಿಳ್ಳಿಂಜೆಗು ಹೆಳಿಯಂದ ಮಾರ್ಗಲು, ಯಿ ಚತುರ ಸೀಮೆ ವಳಗಾಗಿ ನಂಬಿಕೆಗೆ ಸ್ವಾಧೀನ ಮಾಡಿ ಯಿಲ್ಲಿ ನಮೂದಿಸಿದೆ

B. Schedule

1. ಬಡಗು ಮಿಜಾರು ಗ್ರಾಮದ ಸರ್ವೆ ನಂಬ್ರ 4/9.18, 5/3A, 6/1-2, 13ಕ/A, 176/1A, 179/2.3, 185/1.2. 3.4. 5.6. 7. 8. 9. 10, 186/1.3.4, 193/A, 203/1.2, 211/1.2 ನೇ ನಮೂದಿಸಿದ ಸರ್ವೆ ಕಿಲ್ಲಿಗಳು
2. ಪಶ್ಚಿಮ ಗ್ರಾಮದ ಸರ್ವೆ ನಂಬ್ರ 227ನೇ ಸ್ಥಳ ಮಾತ್ರ
3. ಕೆಲ್ಲಿಪಾಡಿ ಗ್ರಾಮದ ಸರ್ವೆ ನಂಬ್ರ 144ನೇ ಸ್ಥಳ ಮಾತ್ರ

C. Schedule

ಬಡಗ ಮಿಜಾರು ಗ್ರಾಮದ ಸರ್ವೆ ನಂಬ್ರ 185/1.2.3.4.5.6,7.8.9.10 ನೇ ಸರ್ವೆ ವಿಸ್ತೀರ್ಣದಲ್ಲಿ 4 ಸೆಂಟ್ಸ್ 79 ಚದರಡಿ ರೂ.ಚ್ಚಾ 2-6-0 ಕ್ಕೆ ಮಾತ್ರ

Particulars of valuation

(a) claim for declaration valued at Rs 13¢ —o—o

(b) " for setting aside the darkhast grant and recovery of possession valued at ten times the assessment Rs 2-6-0 } Rs 23-12-0

Total Rs 153-12-0

Memo of costs

		Plaintiffs.	1st. defendant.	defendants 4 to 8.
1.	Stamp for plaint	17-12-0	o-o-o	o-o-o
2	vakalat.	1-o-o	1-o-o	2-o-o
3 "	Exhibits	o-12-o	o-o-o	o-o-o
4	Petition	4-8-o	2-4-o	o-12-o
5.	Service of process	16-12-o	o-8-o	o-o-o
6.	Allowances paid to witnesses	33-2-o	o-o-o	o-o-o
7.	Commissioners fees	20-o-o	o-o-o	10-o-o
8.	Pleaders fees	7-12-o	o-o-o	7-12-o
	Total Rs	101-10-o	3-12-o	20-8-o

Given under my hand and the seal of the court this 18th day of September 1925

Sd/ N. V. Pai,
Dt Munsef.

Note. The parties should apply as soon as possible for the return of all exhibits which they may wish to preserve, as the record will be liable to be destroyed after three years or after ten years from this date, according to the nature of exhibits, under the rules for the destruction of records

(True copy)

Sd/ x x x
Examiner.

VB
16/12/25

11

R. F. XXII-A-19.—18,003—12-12-24.

FOR MEMBER

Subject.— Suits (S. Kanara) - Karkal D. No - CS. 479/24 - Wang Claim - advance decision - appeal - Sanctioned

READ AGAIN B.P. No. _____ dated _____ 192 .

" " " _____ " " _____ 192 .

READ ALSO :—

Register No. A 2649/24 From the _____, No. _____, dated _____ 192

" " _____ " " _____, " _____, " _____ 192

" " _____ " " _____, " _____, " _____ 192

RESOLUTION. (Mis) No. 2819, dated 22-12-1925

The Board sanctions the filing of an appeal against the decision in CS. 479 of 1924 on the file of the Dt. Munsiff's Court Karkal and approves the draft memo of grounds submitted by the Collector subject to the deletion of the word "guilt" in paragraphs 3, 4 & 10.

2. The Collector is requested to instruct the Govt. Pleader particularly to urge on the appellate court the decision in S.A. 2048 of 1924 on the file of the High Court and the facts that the only acts of

of possession round by the Dl
Munsiffs are having grazing
Cattle and collecting fuel and
manure leaves which acts are allowed
by Govt on all waste lands and
that the plaintiffs have not proved
any acts of possession inconsistent
with such rights for instance a fixed, a
defensible and an exclusive
occupation to the perception of
Govt as held by the Bombay
& Madras High Courts in the decisions
quoted in para 3 of the Collrs
Do Ex 12 letter

22/12 22/12

16/5/11

To the Collr of S Canara
with a copy of proposed
Rules under
Govt
Tr Cond

Appeal time expires 28. 12. 25.

C. F. 17-a—2-14.

OFFICE NOTE.

Subject.

Suits (S Kanara) - Karkal D. Mce - Gr. 479/25 -- warg claim - adverse decision - appeal

From

A Register No. 7491/25

To the asst. Secy.

The Collector's letter at pp 1-2 Cs. is submitted for orders.

2. The question is whether an appeal should be filed against the judgment at pp 11-19 Cs.

3. The Collector has not submitted the Sketch which is necessary for the complete understanding of the judgment but there is no time to make a reference and obtain it as the appeal has to be filed immediately on the reopening of the Courts after the x'mas vacation

4. However the following points are clear from the judgment & the records.

The Dt. Munsiff decreed the suit land to the plaintiffs on the basis

Since rec'd in today's tappal + put up

28 12 25.

Page No.—

That possession follows title but there was no evidence. p17 Q.
evidence to show exclusive possession. It is admitted.
by the plaintiff No 1 that there is no documentary p14 Q. pass
evidence to show that the suit land was
in the possession of the plaintiffs. It is in evidence
That the cattle of people other than the plaintiffs 14 Q.
graze indiscriminately in the suit land. Govt
granted land on Sarkhasi to persons other than
the plaintiffs as also to the plaintiffs. On these
circumstances the Cl should not have held that
possession was proved.

Again the plaintiffs' predecessor in title
knew that the suit land was excluded from the
mulpatta in 1904 as evidenced by his petition of 12-9-04
requesting that the suit land also may be included
in the mulpatta. His petition was rejected and he
was informed of it in the same year in an order dated (I)
26-10-04 After this he did not take any steps
to get the suit land included in the mulpatta. The Dt
Munsiff observes that "There is nothing in Madras Act
" IV of 1897 or any notification issued there under that
" mulpatta titles not duly notified within the time
" allowed are to be forfeited." The point is not this at all.

It was open to him to take steps to get the land included in the mulkpatta within the statutory period subsequent to his knowledge of the fact of the denial of his right to have it included in the mulpatta in 4. It is clear from the petition of 12.9.04 that he knew that his title was denied to the suit land. He applied for the inclusion of the land. This was again rejected and mulapatta was granted in respect of the portion of 13.ac.18 cents in which ~~excluding~~ the suit land was not included & the fact was intimated to the parties. This was on 26.X.04 and 16.II.05 as the plaintiff and their predecessors in title did not take any steps to have the land included in the patta for a period exceeding ~~12 years~~ the statutory period the suit was barred by time. The judgment at (V) is exactly parallel to this and should have been followed.

The appeal may, it is submitted be sanctioned & the draft grounds of appeal at Pp 4-6 of may be approved.

PO

Dewey

Considering the large interests at stake the Collr's recommendation to file an appeal may be approved. The plaintiff's claim is in respect of 163.15 acres.

The draft grounds of appeal may be accepted

for
Collr

I agree that an appeal should be filed.

The word "jute" in paras 3, 4 & 10 should be deleted

The decision in (V) should be based on the Court Valso the part marked A in para 2 of Collr's letter

21/12/95

Draft attached

In the asst Secy

Draft submitted

22/12

22/12

Asstt Secy